

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 164

INTRODUCER: Senator Detert

SUBJECT: Children in Foster Care

DATE: February 1, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	Pre-meeting
2.			JU	
3.			AHS	
4.			AP	
5.				
6.				

I. Summary:

SB 164 makes numerous changes to the law relating to normalcy for children in foster care including:

- Providing legislative findings and intent that recognize the importance of normalizing the lives of children in foster care;
- Establishing a reasonable and prudent parent standard of care and providing for application of the standard;
- Protecting caregivers who apply the reasonable and prudent parent standard from liability; and
- Eliminating the current requirement for the development of a normalcy plan and quarterly updates and replacing it with an assessment of normalcy goals and objectives at each judicial review.

The bill also changes the standard for the return of children to an abusive or neglectful parent after that parent has completed his or her case plan and the child has been living with the other parent.

The bill is not expected to have a fiscal impact on the state and has an effective date of July 1, 2013.

This bill substantially amends the following sections of the Florida Statutes: 39.522 and 409.1451. This bill creates section 39.409 of the Florida Statutes.

II. Present Situation:

Normalcy for Children

Background

Each year, approximately 30,000 children in foster care age out of the foster care system nationwide, typically at 18 years of age, and this number has risen steadily over the past decade.¹ In Florida, 1,181 children aged out of care in 2011-2012 and those numbers have declined over the past three years.² These are young adults who experienced significant psychological trauma during their formative years, including being neglected and/or abused, being separated from their homes, friends, families and most things familiar to them, and often experiencing multiple placements in homes and group home settings.

The foster care system, which has historically been focused on safety and concerned about liability, often creates huge barriers to the normalcy of a child's experiences growing-up, causing children in care to miss out on many rites of passage common to their peers. While their friends are getting their driver's licenses, most children in care are not since they generally have no one to teach them to drive or the money for insurance or driver's education, let alone access to a car.³ Other rites of passage are anything but typical for children in care, as each one requires some additional layers of bureaucracy. Getting a first job, participating in sports, going camping with friends, and even going to the prom are all examples of activities that, while may be a normal part of growing up for most children and teenagers, are not always readily available to many foster youth.⁴

These problems are compounded for children in care who live their teen years in group homes. They often do not benefit from normal growing-up experiences that most children take for granted, but which prepare them for adult life, such as seeing an adult pay bills each month, do the laundry, buy groceries, pay taxes, arrange for car insurance, or undertake the dozens of other mundane tasks required to run a household.⁵ In Florida, 60 percent of children 13-17 years of age live in group homes.⁶

Florida

The Department of Children and Families (DCF or department) and community-based care lead agencies (CBCs) are responsible for dependency proceedings and managing and providing child protection, foster care, and adoption services. Foster care services include a range of independent

¹ Congressional Coalition on Adoption Institute. Fact Sheet. (2011). Retrieved January 28, 2013 from <http://www.ccaainstitute.org/why-we-do-it-/facts-and-statistics.html>.

² Provided as part of a data request from Senate Children, Families and Elder Affairs staff to the Department of Children and Families. Response received on December 21, 2012.

³ Martha Shirk and Gary Stangler, *On Their Own*, Basic Books (2004).

⁴ *Id.*

⁵ First Star and Children's Advocacy Institute of the University of San Diego School of Law. *The Fleecing of Foster Children: How We Confiscate Their Assets and Undermine Their Financial Security*. (2011). Retrieved January 28, 2013, from http://www.caichildlaw.org/Misc/Fleecing_Report_Final_HR.pdf.

⁶ Provided as part of a data request from Senate Children, Families and Elder Affairs staff to the Department of Children and Families. Response received on December 21, 2012.

living services. Section 409.1451, F.S., requires the department to adopt by rule procedures to administer the independent living transition services program, including balancing the goals of normalcy and safety for children and providing caregivers with as much flexibility as possible to enable a child to participate in normal life experiences. Current rule, relating to licensed out of home caregiver roles provides that:

- Children in licensed out-of-home care shall be afforded every opportunity for social development, recreation, and normalization of their lives. Children in licensed out of home care may attend overnight or planned outings if such activities are determined to be safe and appropriate by the licensed out-of-home caregiver. The services worker ... must be notified of the activity.
- The licensed out of home caregiver may allow foster children to experience circumstances without adult supervision depending on the child's age, maturity, and ability to make appropriate decisions ... the licensed out of home caregiver shall be prudent and conscientious about circumstances where the child is granted independence, including trips to the movies, mall, athletic events and work.
- Overnight trips exceeding one night must be approved by the child's services worker and must not interfere with visitation schedules.
- Background checks for dating and outings, such as school field trips, Cub Scout campouts, and activities with friends, families, school and church groups, are not necessary for participation in normal school or community activities.⁷

The department has proposed changes to the rule relating to licensed out of home caregiver roles, however these changes do not appear to substantively change provisions relating to normalcy. In addition, former secretaries and the current secretary of the department have issued memoranda requiring community-based care lead agencies and their providers to implement policies related to normalcy.⁸ In general foster teens continue to report that the effort to establish a more normal living environment within the foster care system is still lagging.⁹

Standard for Reunification

Currently, the provisions in Chapter 39 relating to a change of custody after disposition have resulted in varying interpretations and inconsistent trial court rulings. In addition, appellate courts have ruled that an endangerment standard must be applied, which requires that the parent causing the dependency be granted reunification unless doing so would endanger the child. Trial courts are not to determine which parent is best suited to provide permanency. The child's best interest is not the controlling standard. This creates a conflict with the overriding principle of Chapter 39 which is the best interest of the child.

When the issue is placement with which parent, Chapter 39 is not clear what standard, endangerment or best interest, should be used to determine a child's permanency. Section 39.521, F.S., says at every review hearing the judge shall decide which parent, if either, shall

⁷ Rule 65C-13.029, F.A.C.

⁸ See Memorandum from Lucy Hadi dated August 31, 2005, Memorandum from George Sheldon dated September 3, 2010, and Memorandum from David Wilkins dated January 20, 2012. On file with the Senate Children, Families, and Elder Affairs Committee.

⁹ Independent Living Services Advisory Council. Annual Report. 2012.

have custody. It further says that when changing custody from one parent to another the standard shall be the best interest of the child.¹⁰ In contrast, section 39.522, F.S., provides that when deciding whether a child should be reunited with a parent, the court shall determine whether the parent has substantially complied with the terms of the case plan to the extent that the safety, well-being, and physical, mental, and emotional health of the child is not endangered by the return of the child to the home.¹¹

Although the situation is the same whether there is one offending parent¹² or two, the most frequent situation occurs when a child is placed with a non-offending parent at disposition and services are provided to the offending parent. Several Florida District Courts of Appeal (DCA) have repeatedly pointed to section 39.522(2), F.S., as the controlling statute and have held that the plain language requires the offending parent be granted reunification if they substantially comply with the terms of the case plan and the court finds no endangerment to the child as a result of reunification. Many of these opinions specifically prohibit an independent review of the child's best interest. For example, in the following case:

The mother appealed the trial court's order denying her motion for reunification with her child following her substantial compliance with the tasks in her case plan. She also appealed "orders approving a general magistrate's report finding that custody of [child] should remain with her father (with visitation by her mother)." *Id.* at 688. After the child was adjudicated dependent, the trial court placed the child with the non-offending father. The case plan goal was reunification with a concurrent plan of remaining with the father. After the mother's substantial compliance with the case plan, the trial court placed the child with the father using a "best interest" standard. *Id.* at 689. The Third DCA wrote, "[t]his case requires us to consider the applicability of different and apparently inconsistent statutory provisions relating to reunification, sections 39.522(2) and 39.621(10), Florida Statutes (2010)." *Id.* at 688. It held "the general magistrate's charge . . . was not to select the "better" permanency option. *Id.* at 690. Instead, having determined that the mother substantially complied with her case plan, the general magistrate was obligated to allow reunification with the mother unless that would "endanger" [the child] as described in § 39.522(2)." *Id.* Further, the Third DCA held "the "best interests" and "endangerment" standards are markedly different. The latter standard applies to a reunification or permanency hearing in which reunification is the primary goal and, as here, the offending parent has substantially complied with her or his case plan." The Third DCA reversed and remanded the case.^{13,14}

¹⁰ Section 39.521(3)(b)2., Florida Statutes.

¹¹ Section 39.522(2), Florida Statutes.

¹² An offending parent is a parent who is the perpetrator of the abuse or neglect that resulted in the child being removed from the home.

¹³ *S.V.-R. v. Department of Children and Family Services*, 77 So. 3d 687 (Fla. 3d DCA 2011).

¹⁴ Also see *D.S. v. Department and Children and Families*, 900 So. 2d 628 (Fla. 5th DCA 2005); *R.H. v. Department of Children and Families*, 948 So. 2d 898 (Fla. 5th DCA 2007); *K.E. v. Department of Children and Families*, 958 So. 2d 968 (Fla. 5th DCA 2007); *M.M. v. Department of Children and Families*, 29 So. 3d 1200 (Fla. 5th DCA 2010); *A.L. v. Department of Children and Families*, 53 So. 3d 324 (Fla. 5th DCA 2010), and *In re G.M.*, 73 So. 3d 320 (Fla. 2d DCA 2011).

III. Effect of Proposed Changes:

The bill makes numerous changes to the law relating to normalcy for children in foster care.

Section 2. of the bill:

- Provides legislative findings and intent that recognize the importance of normalizing the lives of children in foster care;
- Provides definitions for the terms “age-appropriate,” “caregiver,” and “reasonable and prudent parent standard;”
- Requires verification by the department and the community-based care lead agencies that private providers have policies in place promoting and protecting the concept of normalcy;
- Establishes a reasonable and prudent parent standard of care and provides for application of the standard; and
- Protects caregivers who apply reasonable and prudent parent standard from liability.

Section 3. of the bill:

- Amends s. 39.522, F.S., which requires the trial court to consider a child’s best interest in a decision to reunify a child from placement with one parent back to the parent who abused or neglected them. This clarifies the statutory provisions on custody between parents post a dependency adjudication by making clear that the standard is not to simply place a child back with the parent who harmed the child once the risk of present or future harm is removed, but requires that such a move also be in the child’s best interest when the child is living in the home of the stable, non-abusive parent.

Section 4. of the bill:

- Eliminates the current requirement for the development of a normalcy plan and quarterly updates for children in foster care and replaces it with an assessment of normalcy goals and objectives at each judicial review.

Administrative rule and memoranda from the office of the department secretary have been insufficient to ensure that the CBCs and their providers set policies allowing children to engage in normal, age-appropriate activities. Children in care are still being denied opportunities to participate like their peers. Empowering the caregiver in statute to approve or disapprove participation in activities by using the reasonable and prudent parent standard and providing them with protection from liability when doing so may improve the chances that all children in foster care have a better chance at normalcy.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

On line 57 of the bill, “pursuant to rule 65C-14, Florida Administrative Code” should be replaced with “under s.409.175, Florida Statutes.”

The addition of lines 136-141 of the bill might create some confusion when taken in conjunction with current s. 39.522(2), F.S., on lines 130-135.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.